RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

JON HUSTED, OHIO SECRETARY OF STATE,
Petitioner,

v.

A. PHILIP RANDOLPH INSTITUTE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC accordingly has a strong interest in this case.

SUMMARY OF ARGUMENT

Using its authority under the Elections Clause, Congress passed the National Voter Registration Act (NVRA), which prohibits state voter purge laws that "result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote . . . ." 52 U.S.C. § 20507(b)(2). The NVRA's command reflects the basic constitutional principle that individuals may not be stripped of their fundamental rights—including the right to vote—because they do not exercise them. "'No other rights guaranteed to citizens are bound by the constant exercise of that right. We do not lose our right to free speech because we do not speak out on every issue.'" S. Rep.

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

103-6, at 17 (1993) (citation omitted). Ohio, however, asserts that, despite what the NVRA says, states may purge qualified voters from the voting rolls simply because they did not vote during a six-year period and did not respond to a request to confirm their eligibility. According to Ohio, the NVRA must be interpreted to allow for this vote purging to avoid raising doubts about its constitutionality. Pet'r Br. at 46-57. Ohio's argument cannot be squared with the text and history of the Elections Clause.

More than two centuries ago, our Constitution's Framers concluded that the federal government must have the final say over the mechanics of federal elections. After lengthy debates over the Elections Clause—beginning at the Constitutional Convention in Philadelphia, continuing in the state ratifying conventions, and through the debates over the Amendments to the Constitution proposed in 1789—the Framers conferred on Congress the power to "make or alter" state election law in order to protect the right to vote in federal elections and allow Congress to set uniform rules for the time, place, and manner of those elections. Where Congress invokes its power to "make or alter" state law, federal law expressly preempts state time, place, and manner regulations, ensuring that states do not interfere with the people's right to vote for their federal representatives.

As this Court has recognized, the Elections Clause "was the Framers' insurance against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress," *Arizona v. Inter Tribal Council, Inc.*, 133 S. Ct. 2247, 2253 (2013), and it provides a "safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate," *Ariz.*

State Legislature v. Ariz. Indep. Redistricting Comm'n, 135 S. Ct. 2652, 2672 (2015). The Framers wrote the Elections Clause using "words of great latitude," because "it was impossible to foresee all the abuses that might be made of the [States'] discretionary power." 2 *Records of the Federal Convention* 240 (Max Farrand ed., 1911). As this Court has repeatedly held, "[t]he Clause's substantive scope is broad. 'Times, Places, and Manner' . . . are 'comprehensive words,' which 'embrace authority to provide a complete code for congressional elections,' including . . . regulations relating to 'registration.'" *Inter Tribal Council*, 133 S. Ct. at 2253 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)).

Using its Elections Clause authority, Congress took account of the "continuing, essential interest in the integrity and accuracy of the process used to select both state and federal officials," *id.* at 2261 (Kennedy, J., concurring), giving states authority to remove individuals from the rolls because of "the death of the registrant" or "a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4)(A), (B). But the NVRA denied states the authority to strip a citizen of the right to vote "by reason of the person's failure to vote." *Id.* § 20507(b)(2). While Congress permitted states to use failure to vote as part of the process of *confirming* a voter's change of residence, *id.* § 20507(c), (d), it prohibited states from stripping the right to vote from inactive voters on the basis of their choice not to vote. In making that judgment, Congress acted for reasons at the very core of the Elections Clause and used its express power to "make or alter" state law in order to "avoid requiring voters to re-register unnecessarily." U.S. Br. at 3. As the United States concedes, "Congress concluded that individuals who fail to vote 'may not have moved or

died' and that eligible individuals should not be removed from the rolls 'merely for exercising their right not to vote.'" *Id.* at 5 (citation omitted). Exercising its power under the Elections Clause, Congress determined that purges targeting inactive voters were an unjustifiable barrier to the right to vote in federal elections. Ohio disagrees, but "the Constitution explicitly gives Congress the final say" on that question. *Foster v. Love*, 522 U.S. 67, 72 (1997). Because Ohio's purge of inactive voters cannot be squared with the command of the NVRA, Resp'ts Br. at 24-51, the judgment of the court of appeals should be affirmed.

ARGUMENT

I. THE TEXT AND HISTORY OF THE ELECTIONS CLAUSE GIVE CONGRESS BROAD POWER TO OVERRIDE STATE LAW IN ORDER TO PROTECT THE RIGHT TO VOTE IN FEDERAL ELECTIONS.

A. The Elections Clause Is Unique in Its Structure, Breadth, and the Power It Grants to Congress.

More than two centuries ago, the Framers of our Constitution "split the atom of sovereignty," creating "two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). The Constitution creates a national government that "owes its existence to the act of the whole people who created it," and establishes "a relationship between the people of the Nation and their National Government, with which the States may not interfere." *Id.* at 839, 845 (Kennedy, J., concurring).

In setting forth the respective powers of federal and state governments to regulate federal elections in the Elections Clause, the Framers gave paramount power to Congress, recognizing that "the National Government . . . must be, controlled by the people without collateral interference by the States." *Id.* at 841 (Kennedy, J., concurring).

The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4, cl. 1. Unique in the Constitution, the plain text of the Elections Clause serves "two functions. Upon the States it imposes the duty ('*shall* be prescribed') to prescribe the time, place, and manner of electing Representatives and Senators; upon Congress it confers the power to alter those regulations or supplant them altogether." *Inter Tribal Council*, 133 S. Ct. at 2253; 4 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 62 (Jonathan Elliot ed., 1836) [hereinafter "*Elliot's Debates*"] ("[I]n the first part of the clause, th[e] power over elections is given to the states, and in the latter part the same power is given to Congress."); *id.* at 68 (explaining that the Elections Clause "enables Congress to alter such regulations as the states shall have made with respect to elections").

The Framers gave Congress the express power to "make or alter" state election law because they were concerned that states would use their power to regulate the time, place, and manner of federal elections to deny or abridge the right of "We the People" to freely select federal representatives of their choice. "The dominant purpose of the Elections Clause, the

historical record bears out, was to empower Congress to override state election rules," *Ariz. State Legislature*, 135 S. Ct. at 2672, a reflection of "the Framers' distrust of the States regarding elections," *U.S. Term Limits*, 514 U.S. at 811 n.21. In federal elections, in which "[voters] act in a federal capacity and exercise a federal right," *id.* at 842 (Kennedy, J., concurring), "Congress was given the whip hand." *ACORN v. Edgar*, 56 F.3d 791, 794 (7th Cir. 1995). In the Framers' judgment, the Elections Clause was a necessary "safeguard against state abuse," *U.S. Term Limits*, 514 U.S. at 808, designed to ensure that federal representatives in Congress would, in fact, be freely and fairly "chosen . . . by the people of the several states," U.S. Const. art. I, § 2, cl. 1. As one Framer explained, in case "the State governments *may* abuse their power, and regulate these elections in such manner as would be highly inconvenient to the people," the Elections Clause gave Congress the express "*constitutional* power of correcting them." Letter from Timothy Pickering, Delegate, Pa. Ratifying Convention, to Charles Tillinghast (Dec. 24, 1787), *quoted in* Charles W. Upham, 2 *The Life of Timothy Pickering* 357 (1873) (emphasis in original).

By its very nature, when Congress acts pursuant to the Elections Clause, it expressly supersedes state law. As this Court recently explained, "when Congress legislates with respect to the 'Times, Places and Manner' of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States." *Inter Tribal Council*, 133 S. Ct. at 2257. This preemptive force has been recognized by this Court for more than a century. *See Ex Parte Siebold*, 100 U.S. 371, 384 (1879) ("[T]he power of Congress over the subject [of federal elections] is paramount. . . . When exercised, the action of

Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them. This is implied in the power to 'make or *alter*.'" (emphasis in original)); *Smiley*, 285 U.S. at 366-67 ("Congress may supplement . . . state regulations or may substitute its own. It may impose additional penalties . . . or provide independent sanctions. It 'has a general supervisory power over the whole subject.'" (quoting *Siebold*, 100 U.S. at 387)). In sum, "the power the Elections Clause confers is none other than the power to pre-empt." *Inter Tribal Council*, 133 S. Ct. at 2257.

At the Founding, the breadth of Congress's express power to "make or alter" state regulation of federal elections was understood by supporters and detractors alike. The plain text of the Elections Clause, as James Madison explained at the Constitutional Convention, uses "words of great latitude," recognizing that "[i]t was impossible to foresee all the abuses that might be made of the [states'] discretionary power." 2 *Records of the Federal Convention*, *supra*, at 240. As Madison explained, "[w]hether the electors should vote by ballot or vivâ voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures[] and might materially affect the appointments." *Id.* at 240-41. Thus, the Framers' understanding was that Congress would have final say over questions of balloting, location of polling places, districting, and other of "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *Smiley*, 285 U.S. at

366. That includes voter registration, as this Court has held. *See Inter Tribal Council*, 133 S. Ct. at 2253.

Opponents of the Elections Clause, too, understood that the Clause gave Congress sweeping power to regulate the time, place, and manner of federal elections, explaining that their "great difficulty" was that "the power given by the 4th section was unlimited," 2 *Elliot's Debates* at 25, and "admits of the most dangerous latitude," 3 *id.* at 175; 4 *id.* at 55 ("[T]hey are words of very great extent. This clause provides that a Congress may at any time alter such regulations, except as to the places of choosing senators.").

In the ensuing debates over ratification of the Constitution, the Elections Clause was vigorously challenged. Anti-federalists argued that the Elections Clause "strike[s] at the state legislatures, and . . . take[s] away that power of elections which reason dictates they ought to have among themselves." 4 *id.* at 51. In their view, "Congress ought not to have the power to control elections." 2 *id.* at 23. Pressed to persuade their fellow Americans that the Elections Clause should be included in the Constitution, the Constitution's supporters justified this power as necessary to protect voting rights in federal elections from state infringement and to promote appropriate uniformity in election administration. These arguments carried the day, establishing the constitutional framework for federal regulation of federal elections that still governs more than two centuries later.

B. The Elections Clause Was Written To Give Congress Power To Protect Voting Rights from State Infringement and Establish Uniform Rules in Federal Elections.

The text and history of the Elections Clause demonstrate that it gives Congress "final say," *Foster*, 522 U.S. at 72, over the broad mechanics of federal elections, rejecting the "idea of state interference with the most basic relation between the National government and its citizens, the selection of legislative representatives." *U.S. Term Limits,* 514 U.S. at 842 (Kennedy, J., concurring). The Elections Clause was designed to empower Congress to "intervene against acts of injustice within the states," Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* 224 (1996), and to establish uniform rules that fulfilled the Constitution's promise of popular sovereignty by "We the People," *The Federalist No. 57*, at 319 (Madison) (Clinton Rossiter ed., rev. ed. 1999) ("Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States.").

During the debates over the Elections Clause at the Constitutional Convention, James Madison explained that the grant of power to Congress to override state regulation of the time, place, and manner of federal elections was necessary because "State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices." 2 *Records of the Federal Convention, supra*, at 240. Madison explained that "the Leg-

islatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections." *Id.* To prevent abuses by the states, it was necessary to give "a controuling power to the Natl. legislature." *Id.* at 241.

Madison was particularly concerned that states would use their power to regulate elections to skew the outcomes of federal elections. "Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed." *Id.* Along similar lines, Gouverneur Morris observed that "the States might make false returns and then make no provisions for new elections." *Id.*; *see The Federalist No. 59*, at 331 (Hamilton) (arguing that, without the Elections Clause, states "could at any moment annihilate [the Union] by neglecting to provide for the choice of persons to administer its affairs"). The Elections Clause was the "Framers' insurance against th[is] possibility." *Inter Tribal Council*, 133 S. Ct. at 2253. By the close of debate, the Convention's overwhelming consensus was that the Constitution should "give the Natl. legislature a power not only to alter the provisions of the States, but [also] to make regulations in case the States should fail or refuse altogether." 2 *Records of the Federal Convention*, *supra*, at 242.

In the ratification debates over the Constitution, the Constitution's supporters justified "Congress's power over elections as a way of correcting unjust state voting systems and defending the people's right to equal voting power." Pauline Maier, *Ratification: The People Debate the Constitution, 1787-1788*, at 210 (2010). For example, in the Virginia ratifying convention, James Madison stressed that Congress ought to have a role in securing equal voting rights.

"Some states might regulate the elections on principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. . . . Should the people of any state by any means be deprived of the right of suffrage, it was judged proper that it should be remedied by the general government." 3 *Elliot's Debates* at 367. Others worried that states would simply not hold elections for federal office, preventing the popular vote demanded by the Constitution. *Id.* at 10 ("If the state legislature . . . would not appoint a place for holding elections, there might be no election . . . ."). These abuses "could only be guarded against by giving this discretionary power to Congress, of altering the time, place, and manner of holding the elections." *Id.*

Likewise, in the Massachusetts Convention, Theophilus Parsons argued that the Elections Clause was necessary to "secur[e] to the people their equal rights of election," 2 *id.* at 26, observing that the grant of power to Congress provided a check against partisan manipulation of the electoral process. "[W]hen faction and party spirit run high," Parsons worried, states might "introduce such regulations as would render the rights of people insecure and of little value. They might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors." *Id.* at 27. "Without these powers in Congress, the people can have no remedy; but the 4th section provides a remedy, a controlling power in a legislature . . . who will hear impartially, and preserve and restore to the people their equal and sacred rights of election." *Id.*; *see id.* at 25-26 (arguing that the Elections Clause was "as highly prized as any [section] in the Constitution" because "the *right* of electing persons to represent the *people* in the federal

government" is "an important and sacred right" (emphasis in original)); *id.* at 51 (arguing that, because of inequality of representation in South Carolina, "representatives . . . from that state, will not be chosen *by the people*, but will be the representatives of a faction of that state. If the general government cannot control in this case, how are the people secure?").[2]

Madison and others also stressed the importance of establishing uniform ground rules in federal elections. At the Virginia ratifying convention, Madison argued that "the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent." 3 *id.* at 367. In other states, too, the Constitution's supporters argued that such regulations "ought to be uniform, and the elections held on the same day throughout the United States, to prevent corruption or undue influence." 2 *id.* at 535; *see* 4 *id.* at 60 ("Uniformity in matters of election is also of the greatest consequence. They ought all to be judged by the same law and the same principles, and not to be different in one state from

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[2] Similar arguments in favor of federal power over federal elections were made in other state conventions as well. *See* 2 *Elliot's Debates* at 441 (arguing that, in the event a state legislature should order a state-wide election to be held in one city, "ought not the general government to have the power to alter such improper election of one of its own constituents parts?"); 4 *id.* at 53-54 (recognizing need for an "ultimate power in Congress" in case "a few powerful states should combine and make regulations concerning elections which might deprive many of the electors of a fair exercise of their rights"); *id.* at 303 ("Congress should have this superintending power, lest, by the intrigues of a ruling faction . . . , the members of the House of Representatives should not really represent the people of the state . . . .").

what they are in another. . . . [I]t will be more convenient to have the manner uniform in all the states."); Letter from Timothy Pickering to Charles Tillinghast (Dec. 24, 1787), *supra*, at 357 ("[I]f any particular State government should be refractory and . . . either make no such regulations or improper ones, then the Congress will have power to make such regulations as will ensure to the *people* their rights of election and establish a *uniformity in the mode of constituting the members of the Senate and House of Representatives.*" (emphasis in original)).

Thus, throughout the ratifying debates, supporters of the Constitution made the case that Congress should have authority to "make or alter" state regulation of the time, place, and manner of federal elections in order to prevent state abuses. Far from infringing on state sovereignty in any way, the text properly gave Congress a "superintending power," 4 *Elliot's Debates* at 303, to alter state rules that threatened to undercut equal voting rights and the federal interest in a uniform system of federal elections.

In the First Congress, the Framers reaffirmed the need for broad federal veto power over state regulation of the time, place, and manner of federal elections. The Framers rejected a proposed amendment to the Elections Clause, which would have permitted Congress to regulate the time, place, and manner of federal elections only when a "State shall refuse or neglect, or be unable . . . to make such election." 1 Annals of Cong. 797 (1789) (Joseph Gales ed., 1790). In the debates over that proposal, Madison argued that "the constitution stands very well as it is" and that the proposed amendment would "tend to destroy the principles and efficacy of the constitution." *Id.* at 798, 800. The Elections Clause was "one of the most

justifiable of all the powers of Congress; it was essential to a body representing the whole community, that they should have power to regulate their own elections, in order to secure a representation from every part, and prevent any improper regulations . . . ." *Id.* at 797.

This Court has repeatedly confirmed what the Constitution's text and history make clear: the Constitution provides for broad congressional power to regulate the time, place, and manner of federal elections in order to "override state election rules," and "act as a safeguard against manipulation of electoral rules by politicians and factions in the States to entrench themselves or place their interests over those of the electorate." *Ariz. State Legislature*, 135 S. Ct. at 2672; *Inter Tribal Council*, 133 S. Ct. at 2253-54; *U.S. Term Limits*, 514 U.S. at 808-09; *see Vieth v. Jubelirer*, 541 U.S. 267, 275-76 (2004) (plurality opinion).

II. THE NATIONAL VOTER REGISTRATION ACT'S BAN ON PURGING INACTIVE VOTERS FALLS SQUARELY WITHIN CONGRESS'S EXPRESS POWER TO ALTER STATE REGULATION OF THE TIME, PLACE, AND MANNER OF FEDERAL ELECTIONS.

In enacting the NVRA, Congress used its express constitutional authority to "make or alter" state regulation of federal elections, preempting voter purge laws that seek to strip the right to vote from qualified, registered voters "by reason of the person's failure to vote," 52 U.S.C. § 20507(b)(2), a prohibition that was maintained in the Help America Vote Act (HAVA), *id.* § 21145(a)(4) (providing that HAVA does not "supersede, restrict, or limit the application" of the NVRA). Thus, while Congress required states to

"conduct a general program that makes a reasonable effort to remove names of ineligible voters from the official lists of eligible voters by reason of (A) the death of the registrant; or (B) a change in residence of the registrant," *id.* § 20507(a)(4)(A), (B), Congress made clear that voters should not be removed because they failed to exercise the fundamental right to vote. As the statute makes explicit, a state's purge of voters "shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote . . . ." *Id.* § 20507(b)(2). In other words, Congress determined that states may not strip citizens of the right to vote—a right "preservative of all rights," *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)—because of their failure to cast a ballot. In doing so, Congress ensured that "once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction." S. Rep. 103-6, at 19; *see* Resp'ts Br. at 24-51 (explaining why Ohio's reading of the NVRA is wrong). Ohio, however, contends that the Act, as so read, "would exacerbate constitutional concerns with the NVRA," and would result in an "aggressive encroachment on the States' power" to establish voter qualifications. Pet'r Br. at 46, 50. Insisting that the Elections Clause only serves a "narrow purpose," *id.* at 49, Ohio claims that the NVRA must be read narrowly to comport with "basic federalism principles," *id.* at 57. This is wrong.

Ohio's argument turns a blind eye to the text of the Elections Clause, whose "substantive scope is broad," and plainly includes "regulations relating to 'registration'," *Inter Tribal Council*, 133 S. Ct. at 2253 (quoting *Smiley*, 285 U.S. at 366), as well as its history, which reflects the Framers' judgment that "it was essential to a body representing the whole communi-

ty, that they should have the power to regulate their own elections, in order to secure a representation from every part, and prevent any improper regulations . . . ." 1 Annals of Cong. 797 (1789). That is why the Framers rejected proposed amendments that would have stripped out from the Elections Clause the power to "alter" state time, place, and manner regulation of federal elections. Ohio simply cannot come to grips with the veto power the Framers gave to Congress.

For good reason, this Court has held that the "power of Congress . . . 'is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.'" *Inter Tribal Council*, 133 S. Ct. at 2253-54 (quoting *Siebold*, 100 U.S. at 392). Far from being limited in purpose, the Elections Clause gives Congress a sweeping power to "secur[e] to the people their equal rights of election," 2 *Elliot's Debates* at 26, in choosing federal representatives, a context in which voters "act in a federal capacity and exercise a federal right," *U.S. Term Limits*, 514 U.S. at 842 (Kennedy, J., concurring). Congress sought to protect this federal right in the NVRA, preventing states from disenfranchising registered voters for failing to exercise their right to vote.

Ohio's contention that the NVRA's limits on purging inactive voters infringes on the power of states to set voter qualifications also falls wide of the mark. Section 20507(b)(2)'s prohibition against purging voters "by reason of the person's failure to vote" forbids a state from stripping the right to vote from registered voters—voters who, by definition, have fulfilled all of the state's voter qualifications. The NVRA's limitation on state voter purges falls squarely within Con-

gress's broad power to regulate the manner of holding federal elections—authority that empowers Congress "'to provide a complete code for congressional elections,'" *Inter Tribal Council*, 133 S. Ct. at 2253 (quoting *Smiley*, 285 U.S. at 366)—and leaves the setting of voter qualifications to the states.[3]

Ohio's argument fares no better when framed as a clear-statement rule "grounded in the relationship between the Federal Government and the States under our Constitution." *Bond v. United States*, 134 S. Ct. 2077, 2088 (2014); Pet'r Br. at 54-57. When it comes to the regulation of the time, place, and manner of federal elections—which includes rules regarding registration—the Constitution gives Congress, not the states, the last word. Indeed, for this reason, this Court in *Inter Tribal Council* flatly rejected use of a clear-statement rule limiting Congress's preemptive powers under the Elections Clause. Because the "power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent." *Inter Tribal Council*, 133 S. Ct. at 2257. Hence, "there is no compelling reason not to read Elections Clause legislation simply to mean what it says." *Id.* No clear statement rule applies here.

In sum, the arguments offered by Ohio to make an end-run around the NVRA's prohibition on purg-

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[3] Ohio also suggests that the NVRA exceeds the powers of Congress as applied to presidential elections. Pet'r Br. at 53. But Ohio's claim that Congress lacks the power to regulate presidential elections has been repeatedly rejected by this Court. *See Ex Parte Yarbrough*, 110 U.S. 651, 657-58 (1884); *Burroughs v. United States*, 290 U.S. 534, 544-45 (1934); *Buckley v. Valeo*, 424 U.S. 1, 90 (1976).

ing qualified voters "by reason of the person's failure to vote," 52 U.S.C. § 20507(b)(2), are manifestly inconsistent with both the statute and the Elections Clause. The Elections Clause gives Congress the last word on the mechanics of federal elections, and thus "requires that [Ohio's] rule give way." *Inter Tribal Council*, 133 S. Ct. at 2257.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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